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19  
20 UNITED STATES DISTRICT COURT  
21  
22 NORTHERN DISTRICT OF CALIFORNIA  
23

24 IN RE VIOLIN MEMORY INC.  
25 SECURITIES LITIGATION

26 Master Docket No. 13-CV-05486-YGR

27 Hon. Yvonne Gonzalez Rogers

28  
**JOINT MEMORANDUM AND POINTS  
OF AUTHORITIES IN FURTHER  
SUPPORT OF THE SHEHK INVESTOR  
GROUP'S MOTION FOR  
APPOINTMENT AS LEAD PLAINTIFF  
AND SELECTION OF COUNSEL**

Date: March 4, 2014  
Time: 2:00 p.m.  
Courtroom: 5, 2nd Floor

1 Lead Plaintiff movants Ali Shehk (“Shehk”) and Alan Richards (“Richards”) (Shehk and  
2 Richards together, the “Shehk Investor Group”) submit this Joint Memorandum in further  
3 support of their motion for Appointment as Lead Plaintiffs and Approval of Lead Counsel. The  
4 Shehk Investor Group possesses the largest financial interest in this litigation and is the “most  
5 adequate plaintiff” under 15 U.S.C. § 78u-4 and 15 U.S.C. § 77z-1. All other movants have  
6 either withdrawn their motions or declined to oppose the Shehk Investor Group’s motion, and  
7 otherwise failed to rebut the Shehk Investor Group’s position as the presumptive Lead Plaintiff.  
8 Consequently, the Shehk Investor Group respectfully requests that its motion be GRANTED.

## **THE SHEHK INVESTOR GROUP REMAINS THE MOST ADEQUATE PLAINTIFF TO REPRESENT THE CLASS**

11 The Court received four motions for Appointment as Lead Plaintiff and Approval of  
12 Lead Counsel. The movants were: (1) Shehk, (2) Richards, (3) Joseph Jaspersen (“Jaspersen”),  
13 and (4) William Merlino (“Merlino”).

14           **Shehk and Richards.** Shehk and Richards, having reviewed the competing motion  
15 papers, decided to join together and form the Shehk Investor Group. *See* Shehk Investor Group  
16 Joint Memorandum, ECF No. 48.<sup>1</sup> The Shehk Investor Group possesses the largest financial  
17 interest in the litigation with approximately \$65,000 in aggregate losses. *See* Shehk Investor  
18 Group Joint Memorandum, ECF No. 48, p. 4. Furthermore, the Shehk Investor Group is the  
19 only movant with standing to prosecute the pending Section 12(a)(2) claim under the Securities  
20 Act of 1933. *See id.* at p. 5. The Shehk Investor Group is presumptively the “most adequate  
21 plaintiff” under 15 U.S.C. § 78u-4 and 15 U.S.C. § 77z-1. *See, e.g., In re Cavanaugh*, 306 F.3d  
22 726, 729-30 (9th Cir. 2002) (citing 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)).

23           **Jaspersen.** Jaspersen did not have the largest financial interest in the litigation. As  
24 such, he was not the “most adequate plaintiff” and accordingly withdrew his motion. *See*  
25 Jaspersen Notice of Withdrawal, ECF No. 46.

<sup>27</sup> References to “ECF No. \_\_” refer to the corresponding docket entry in the Master Docket, 4:13-cv-05486-YGR, unless indicated otherwise.

**Merlino.** Merlino, similar to Jaspersen, conceded he “[did] not possess the ‘largest financial interest in the relief sought by the class,’ as required by the PSLRA.” *See* Merlino Notice of Non-Opposition, ECF No. 47. While Merlino did not withdraw his motion, he filed a Notice of Non-Opposition which failed to rebut the Shehk Investor Group’s status as the presumptive Lead Plaintiff. *See id.*

6 Where, as here, a presumptive lead plaintiff's motion is unopposed, the motion should  
7 be granted. *See Booth v. Strategic Realty Trust, Inc.*, No. 13-cv-04921-JST, 2014 U.S. Dist.  
8 LEXIS 10501 (N.D. Cal. Jan. 27, 2014); *City of Dearborn Heights Act 345 Police & Fire Ret.*  
9 *Sys. v. Align Tech., Inc.*, No. 12-CV-06039-LHK, 2013 U.S. Dist. LEXIS 76416 (N.D. Cal. May  
10 29, 2013); *City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*, No. 5:11-CV-04003-LHK,  
11 2012 U.S. Dist. LEXIS 2776 (N.D. Cal. Jan. 9, 2012); *see also Foster v. Maxwell Techs., Inc.*,  
12 No. 13-cv-00580-BEN-RBB, 2013 U.S. Dist. LEXIS 154538 (S.D. Cal. Oct. 24, 2013).  
13 Pursuant to 15 U.S.C. § 78u-4, 15 U.S.C. § 77z-1, and the persuasive precedent from this  
14 District, the Shehk Investor Group respectfully requests that its motion be GRANTED in its  
15 entirety.

16 | Dated: February 18, 2014 Respectfully submitted,

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